

# HOUSE BILL No. 1334

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 8-1-2.

**Synopsis:** IURC fining authority. Allows the utility regulatory commission (IURC) to impose a civil penalty of up to \$5,000 if a public utility providing energy services violates or fails to comply with any: (1) utility law; or (2) rate or service requirement imposed by the IURC. Allows the IURC to impose an additional penalty of up to \$10,000 if the violation or failure to comply demonstrates a willful disregard by the public utility of its duty to remedy the violation or a willful failure to comply. Specifies that a suit to recover a penalty imposed by the IURC shall be brought by the attorney general.

**Effective:** July 1, 2009.

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**Moses, Pierce**

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January 13, 2009, read first time and referred to Committee on Commerce, Energy, Technology and Utilities.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## HOUSE BILL No. 1334

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 8-1-2-109 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 109. **(a) This section**  
3 **does not apply to:**

4 **(1) a public utility that owns, operates, manages, or controls**  
5 **any plant or equipment in Indiana for the production,**  
6 **transmission, delivery, or furnishing of heat, light, or power;**  
7 **or**

8 **(2) a department of public utilities created under IC 8-1-11.1.**

9 **(b) A public utility that violates this chapter, or fails to perform any**  
10 **duty enjoined upon it, for which a penalty is not otherwise provided,**  
11 **commits a Class B infraction.**

12 SECTION 2. IC 8-1-2-109.1 IS ADDED TO THE INDIANA CODE  
13 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
14 1, 2009]: Sec. 109.1. **(a) This section does not apply when a public**  
15 **utility's violation or failure to comply under subsection (d) is**  
16 **caused by circumstances beyond the control of the public utility,**  
17 **including any of the following:**



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- (1) Customer provided equipment.
- (2) A negligent act or omission of a customer.
- (3) An unavoidable casualty.
- (4) An act of God.

(b) As used in this section, "public utility" means every corporation, company, partnership, limited liability company, individual, or association of individuals, or their lessees, trustees, or receivers appointed by a court, that may own, operate, manage, or control any plant or equipment in Indiana for the production, transmission, delivery, or furnishing of heat, light, or power. The term includes a department of public utilities created under IC 8-1-11.1. The term does not include:

- (1) a municipality or political subdivision;
- (2) a rural electric membership corporation organized or operating under IC 8-1-13; or
- (3) a corporation organized under IC 23-17-1 that is an electric cooperative and that has at least one (1) member that is a corporation organized under IC 8-1-13.

(c) A public utility and every officer of a public utility shall comply with every order or rule of the commission made under this chapter.

(d) Except as otherwise provided in this chapter, if the commission finds, after notice and hearing, that a public utility has violated this chapter or failed after due notice to comply with:

- (1) a standard of service established by commission rule; or
- (2) a rate or service requirement of a final and unappealable order of the commission;

the commission may order the public utility to pay a civil penalty of not more than five thousand dollars (\$5,000) for each violation or failure to comply.

(e) Notwithstanding subsection (d), if the commission finds after notice and hearing that the public utility's violation or failure to comply demonstrates, by a continuing pattern of conduct, a willful disregard by the public utility of its obligation to remedy the violation or a willful failure to comply, the commission may impose an additional civil penalty of not more than ten thousand dollars (\$10,000) for each violation or failure to comply.

(f) The commission shall consider the following when determining the appropriateness of the imposition or amount of a civil penalty:

- (1) The size of the public utility.
- (2) The gravity of the violation or failure to comply.

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1           **(3) The good faith of the public utility in attempting to:**

2               **(A) remedy the violation; or**

3               **(B) achieve compliance after receiving notification of the**  
 4               **violation or failure to comply.**

5           **(4) The effect of the civil penalty on the public utility's**  
 6           **financial ability to provide adequate and reliable service.**

7           **(5) If the public utility is a nonprofit company:**

8               **(A) the effect of the penalty on the company's members**  
 9               **and their capitalization of the company; and**

10              **(B) whether the act or omission causing the violation or**  
 11              **failure to comply was approved or requested by the**  
 12              **company's members.**

13           **In the order imposing the civil penalty, the commission shall make**  
 14           **specific findings with respect to the factors described in**  
 15           **subdivisions (1) through (5).**

16           **(g) A public utility may not be subject to both a civil penalty**  
 17           **under this section and a negotiated penalty under a commission**  
 18           **approved settlement agreement for the same violation or failure to**  
 19           **comply. If the commission has approved a settlement agreement**  
 20           **that includes penalties or remedies for noncompliance with specific**  
 21           **provisions of the settlement agreement, the penalties provided in**  
 22           **this section do not apply to those instances of noncompliance**  
 23           **during the life of the settlement agreement.**

24           **(h) Notwithstanding section 112 of this chapter, the civil**  
 25           **penalties provided for in this section for each violation or failure**  
 26           **to comply by a public utility may not be multiplied or increased**  
 27           **because of the number of customers affected or the length of time**  
 28           **service is affected. Only one (1) violation or failure to comply per**  
 29           **day may be attributed to a public utility as a result of a particular**  
 30           **condition, system outage, storm, act, omission, event, decision, or**  
 31           **other cause occurring on that day.**

32           **(i) Civil penalties recovered under this section shall be paid into**  
 33           **the state general fund.**

34           **(j) Upon the motion of a public utility, the commission shall stay**  
 35           **the effect or enforcement of an order under this section pending an**  
 36           **appeal, if the public utility posts a bond that complies with Rule 18**  
 37           **of the Indiana Rules of Appellate Procedure.**

38           **SECTION 3. IC 8-1-2-115 IS AMENDED TO READ AS**  
 39           **FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 115. The commission**  
 40           **shall inquire into any neglect or violation of the statutes of this state or**  
 41           **the ordinances of any city or town by any public utility doing business**  
 42           **therein, or by the officers, agents, or employees thereof, or by any**

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1 person operating the plant of any public utility, and shall have the  
2 power, and it shall be ~~its~~ **the commission's** duty, to enforce the  
3 provisions of this chapter, as well as all other laws, relating to public  
4 utilities. Any forfeiture or penalty provided in this chapter shall be  
5 recovered, and suit therein shall be brought in the name of the state of  
6 Indiana ~~in the circuit or superior court where the public utility has its~~  
7 ~~principal place of business: by the attorney general in a court that~~  
8 **has jurisdiction.** Complaint for the collection of any such forfeiture  
9 may be made by the commission or any member thereof, and, when so  
10 made, the action so commenced shall be prosecuted by the **attorney**  
11 ~~general. counsel.~~

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